

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ORIE ANDERSON)	
)	
)	CASE NO.: 1:11 CV 01685
Petitioner,)	
)	
)	
v.)	JUDGE DONALD C. NUGENT
)	
KEITH SMITH, WARDEN)	
)	<u>ORDER ADOPTING REPORT</u>
)	<u>AND RECOMMENDATION</u>
Respondent.)	

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge Greg White. The Report and Recommendation, (ECF #13), is hereby ADOPTED.

Petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on August 12, 2011 challenging the constitutionality of his convictions for murder, two firearm specifications, and having a weapon while under disability. (ECF #1.) The Petition alleges the following grounds for relief: (1) Petitioner's conviction was not supported by sufficient evidence and thus the trial court should have granted his Motion for Acquittal; (2) Petitioner's conviction was against the manifest weight of the evidence; (3) prosecutorial misconduct; and (4) ineffective assistance of trial counsel. Magistrate Judge White found that Petitioner's claims lacked merit and that the Petition, therefore, should be denied. On July 9, 2012, Petitioner timely filed his objections to the Magistrate's Report and Recommendation. (ECF #14.)

Petitioner's sole objection to the Report and Recommendation is that he "never had an opportunity to file [his] traverse." On March 6, 2012, however, Magistrate Judge White granted

Petitioner's motion for a thirty-day extension of time in which to file his traverse, moving the deadline to file to April 3, 2012. (ECF #12.) Petitioner subsequently failed to file his traverse within the thirty-day deadline or file a motion for an additional extension of time. A petitioner who has been granted an extension of time in which to file a traverse and then subsequently fails to file a traverse may be considered to have waived his right to do so. *See Saunders v. Medina*, No. 1:07-CV-00605, 2008 WL 4966503, at *1 n.1 (E.D. Cal. Nov. 20, 2008). As a result of his failure to file a traverse or to indicate to the court his intention to do so, Petitioner's right to file a traverse is deemed waived.

The Court finds Magistrate Judge White's Report and Recommendation to be thorough, well-written, well-supported, and correct. The Report and Recommendation fully and correctly addresses all of Petitioner's claims, and the Petitioner's objection is unwarranted. This Court, therefore, adopts the Magistrate's Report in its entirety. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); FED. R. APP. P. 22(b). Petitioner's motion for habeas corpus is hereby DENIED. IT IS SO ORDERED.

/s/Donald C. Nugent
DONALD C. NUGENT
United States District Judge

DATED: July 30, 2012